

The designation of who constitutes the representatives of the miners is basically a decision making process on the part of the miners at the mine in conjunction with the organization representation rights (Tr. 166).

The miners that are employed at the mine have a right to designate their representatives. The UMWA has the inherent right, based on its organizational structure and the fact that they are the bargaining representative of those employees, to have access to the mine under § 103(f). In sum, once the miners at the mine designate the UMWA International they designate it for all provisions of the Act (Tr. 168).

The persons designated in the Part 40 regulations are filed with MSHA and the operator. The filings under Part 40 provide a mechanism for the miners at the mine to designate their representatives (Tr. 170).

#### Emery's Evidence

Earl R. White, James T. Jensen, Dave Lauriski, William Ponceroff and John Barton testified for Emery,

Earl R. White, the mine manager and top management official at the Deer Creek mine, is presently employed by Utah Power and Light. On April 15, 1986 he served in the same capacity for Emery Mining Company (Tr. 171, 172, 196). White is responsible for the mine, its production, its surface facilities and the transportation of the coal (Tr. 173).

On April 15 at 7:45 a.m. Frank Fitzek (chairman of the local safety committee) and Joe Crespin, (a member of the pit committee <sup>12/</sup>), entered his office at the mine and stated that Tom Rabbitt would be visiting the mine that day. This time of the day involved a shift change and White was very busy. White called Terry Jordan, safety engineer at Deer Creek, to inquire as to what was "going on"; in addition, he asked if they had been notified. At that particular time there was a closure order on the third south belt, one of the main belt arteries in the mine (Tr. 174, 175). On inquiry Fitzek denied inviting Rabbitt. White asked what provision of the contract was involved. The miner replied it was under paragraph 1 of Article III, section (d) of the labor contract (Tr. 175, 176). White asked if they had invited Rabbitt underground to look at something in particular. His reply was negative. They wanted Rabbitt to talk to White. White complained about the short notice. The 24-hour notice requirement had been relayed to White, Fitzek and others

<sup>12/</sup> Pit committee is a group of individuals elected by miners. The committee handles contract issues (Tr. 175, 195).